



PATENT  
3156-0119P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Cudney et al. Conf.: 6366  
Appl. No.: 10/665,601 Group: 1771  
Filed: September 22, 2003 Examiner: J. Guarriello  
For: CUSHIONING PADS AND THE FORMATION OF  
CUSHIONING PAD

PETITION UNDER 37 C.F.R § 1.47(b)

**Mail Stop Petition**

Director of the US Patent and Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

This petition is for Phoenix Performance Products, Inc. to make the application on behalf of themselves and the non-signing inventor, Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH.

**1. Declaration**

Attached is a Declaration listing Mr. Douglas J. CUDNEY's and Ms. Karen BREITBACH's name, residence, citizenship, and last known address, and signed by Mr. David Anderson, President & CEO of Phoenix Performance Products, Inc.

**2. Proof of Proprietary Interest**

Attached is a copy of a worldwide Assignment document, in which Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH agree in writing to assign their rights in the present invention to Phoenix Performance Products, Inc. This assignment was

recorded at reel 010311 / frames 0363-0365 in the records of the USPTO.

Moreover, Mr. Cudney and Ms. Breitbach signed and dated a declaration on September 30, 1999. However, the declaration was technically defective due to Ms. Breitbach listing her post office address as her residence (hence not listing her residence), and Mr. Cudney not listing his residence, post office address or citizenship.

**3. Proof of the Pertinent Facts**

Attached is a Statement of Facts in Support of Filing on Behalf of Non-signing Inventors. The statement is made by Mr. David H. Anderson and concerns the pertinent facts regarding Mr. Douglas J. CUDNEY's and Ms. Karen BREITBACH's refusal to sign the Declaration. In this Statement of Facts, Mr. David H. Anderson sets forth that a diligent effort was made to have Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH sign the Declaration, but that Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH repeatedly gave their express oral refusal to sign the Declaration.

**4. Proof that Action is Necessary to Preserve the Rights of the Parties or to Prevent Irreparable Damage**

The present application is in condition for allowance, except for the defective declaration. See the Notice of Allowance mailed June 19, 2003. Phoenix Performance Products, Inc. needs to have the declaration accepted in order to preserve their patent right in the invention.

**5. Inventor's Last Known Address**

The inventor's last known addresses are as follows:

Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH  
22 First Street  
Orangeville, Ontario  
L9W 2C7 CANADA

**6. Fee Payment (37 C.F.R. § 1.17(i))**

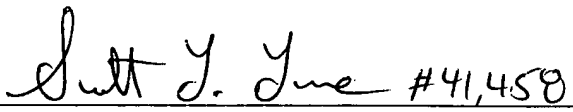
- ☒ A check in the amount of \$130.00 is enclosed.
- ☐ Please charge Deposit Account No. 02-2448 in the amount of \$0.00. This form is submitted in triplicate.

A *bona fide* attempt is being made to comply with the provisions of 37 C.F.R. 1.47.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #41,458  
James M. Slattery, #28,380

JMS/SLL:lmh

Attachment: State of Facts  
Declaration

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000

U.S. Application No. 10/665,601



**Statement of Facts in Support of Filing**  
**on Behalf of a Non-signing Inventors**

1. I, David H. Anderson, attest that I am an employee of Phoenix Performance Products, Inc. I attest that I have diligently attempted to persuade Mr. Douglas Cudney and Ms. Karen Breitbach, the inventors of U.S. Application No. 10/665,601, to sign a new declaration for this application. To date, I have been unsuccessful in persuading Mr. Douglas Cudney and Ms. Karen Breitbach to sign the declaration.

2. I attest that Mr. Cudney and Ms. Breitbach are no longer employed by, or in a business relationship with, Phoenix Performance Products, Inc.

3. I attest that Mr. Cudney's and Ms. Breitbach's last address, known to the personnel department of Phoenix Performance Products, Inc., is:

Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH  
22 First Street  
Orangeville, Ontario  
L9W 2C7 CANADA

4. I attest that a new declaration and a letter requesting that the declaration be signed was sent to Mr. Cudney's and Ms. Breitbach's last known address, but that a signed declaration was not returned to me or Phoenix Performance Products, Inc.

5. I attest that Mr. Cudney and Ms. Breitbach's last telephone number, known to the personnel department of Phoenix Performance Products, Inc., is: 519 941 7448.

6. I attest that I spoke with Mr. Cudney's and Ms. Breitbach's by telephone on several occasions. However, Mr. Cudney and Ms. Breitbach orally refused to sign the declaration.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

 CEO Feb. 18/04  
Mr. David H. Anderson Title Date